

Central Intelligence Agency



Washington, D.C. 20505

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Honorable G. William Whitehurst
House of Representatives
Washington, D.C. 20515

Dear Mr. Whitehurst:

I was gratified to learn that during the final hours of the First Session of the 98th Congress, S. 1324, the "Intelligence Information Act of 1983," was passed by the Senate. This becomes even more meaningful in light of the introduction last week of its companion bill, H.R. 4431, with you as its sponsor. I strongly believe that this legislation represents a long sought-after balance between the need to relieve the Central Intelligence Agency of the unique problems it faces under the Freedom of Information Act, and the public's desire for access to Agency records.

I want you to know that I appreciate your support in these efforts and that I strongly feel that your sponsorship of H.R. 4431 will go far in helping achieve this balance.

Sincerely,

/s/ William J. Casey

William J. Casey
Director of Central Intelligence

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To amend the National Security Act of 1947 to regulate public disclosure of information held by the Central Intelligence Agency.

Mr. WHITEHURST introduced the following bill; which was referred jointly to the Committees on Government Operations and Post Office and Civil Service

(1) the Freedom of Information Act is providing
the people of the United States with an important
means of acquiring information concerning the work-

1 ings and decisionmaking processes of their Govern-
2 ment, including the Central Intelligence Agency;

3 (2) the full application of the Freedom of Informa-
4 tion Act to the Central Intelligence Agency is, howev-
5 er, imposing unique and serious burdens on this
6 agency;

7 (3) the processing of a Freedom of Information
8 Act request by the Central Intelligence Agency nor-
9 mally requires the search of numerous systems of
10 records for information responsive to the request;

11 (4) the review of responsive information located in
12 operational files which concerns sources and methods
13 utilized in intelligence operations can only be accom-
14 plished by senior intelligence officers having the neces-
15 sary operational training and expertise;

16 (5) the Central Intelligence Agency must fully
17 process all requests for information, even when the re-
18 requester seeks information which clearly cannot be re-
19 leased for reasons of national security;

20 (6) release of information out of operational files
21 risks the compromise of intelligence sources and
22 methods;

23 (7) eight years of experience under the amended
24 Freedom of Information Act has demonstrated that this
25 time-consuming and burdensome search and review of

1 operational files has resulted in the proper withholding
2 of information contained in such files. The Central In-
3 telligence Agency should, therefore, no longer be re-
4 quired to expend valuable manpower and other re-
5 sources in the search and review of information in
6 these files;

7 (8) the full application of the Freedom of Informa-
8 tion Act to the Central Intelligence Agency is per-
9 ceived by those who cooperate with the United States
10 Government as constituting a means by which their co-
11 operation and the information they provide may be dis-
12 closed;

13 (9) information concerning the means by which in-
14 telligence is gathered generally is not necessary for
15 public debate on the defense and foreign policies of the
16 United States, but information gathered by the Central
17 Intelligence Agency should remain accessible to re-
18 questers, subject to existing exemptions under law;

19 (10) the organization of Central Intelligence
20 Agency records allows the exclusion of operational files
21 from the search and review requirements of the Free-
22 dom of Information Act while leaving files containing
23 information gathered through intelligence operations
24 accessible to requesters, subject to existing exemptions
25 under law; and

1 (11) the full application of the Freedom of Infor-
2 mation Act to the Central Intelligence Agency results
3 in inordinate delays and the inability of these agencies
4 to respond to requests for information in a timely
5 fashion.

6 (b) The purposes of this Act are—

7 (1) to protect the ability of the public to request
8 information from the Central Intelligence Agency
9 under the Freedom of Information Act to the extent
10 that such requests do not require the search and
11 review of operational files;

12 (2) to protect the right of individual United States
13 citizens and permanent resident aliens to request infor-
14 mation on themselves contained in all categories of
15 files of the Central Intelligence Agency; and

16 (3) to provide relief to the Central Intelligence
17 Agency from the burdens of searching and reviewing
18 operational files, so as to improve protection for intelli-
19 gence sources and methods and enable this agency to
20 respond to the public's requests for information in a
21 more timely and efficient manner.

22 SEC. 3. (a) The National Security Act of 1947 is
23 amended by adding at the end thereof the following new title:

1 "TITLE VII—RELEASE OF REQUESTED INFORMA-
2 TION TO THE PUBLIC BY THE CENTRAL IN-
3 TELLIGENCE AGENCY

4 "DESIGNATION OF FILES BY THE DIRECTOR OF CENTRAL
5 INTELLIGENCE AS EXEMPT FROM SEARCH, REVIEW,
6 PUBLICATION, OR DISCLOSURE

7 "SEC. 701. (a) In furtherance of the responsibility of the
8 Director of Central Intelligence to protect intelligence
9 sources and methods from unauthorized disclosure as set
10 forth in section 102(d)(3) of this Act (50 U.S.C. 403(d)(3))
11 and section 6 of the Central Intelligence Agency Act of 1949
12 (50 U.S.C. 403g), operational files located in the Directorate
13 of Operations, Directorate for Science and Technology, and
14 Office of Security of the Central Intelligence Agency shall be
15 exempted from the provisions of the Freedom of Information
16 Act which require publication or disclosure, or search or
17 review in connection therewith, if such files have been spe-
18 cifically designated by the Director of Central Intelligence to
19 be—

20 "(1) files of the Directorate of Operations which
21 document foreign intelligence or counterintelligence op-
22 erations or intelligence or security liaison arrangements
23 or information exchanges with foreign governments or
24 their intelligence or security services; or

1 “(2) files of the Directorate for Science and Tech-
2 nology which document the means by which foreign in-
3 telligence or counterintelligence is collected through
4 scientific and technical systems;

5 “(3) files of the Office of Security which document
6 investigations conducted to determine the suitability of
7 potential foreign intelligence or counterintelligence
8 sources:

9 *Provided, however,* That nondesignated files which may con-
10 tain information derived or disseminated from designated
11 operational files shall be subject to search and review. The
12 inclusion of information from operational files in nondesig-
13 nated files shall not affect the designation of the originating
14 operational files as exempt from search, review, publication,
15 or disclosure: *Provided further,* That the designation of any
16 operational files shall not prevent the search and review of
17 such files for information concerning any special activity the
18 existence of which is not exempt from disclosure under the
19 provisions of the Freedom of Information Act or for informa-
20 tion reviewed and relied upon in an investigation by the intel-
21 ligence committees of the Congress, the Intelligence Over-
22 sight Board, the Office of General Counsel of the Central
23 Intelligence Agency, the Office of Inspector General of the
24 Central Intelligence Agency, or the Office of the Director of
25 Central Intelligence for any impropriety, or violation of law,

1 Executive order, or Presidential directive in the conduct of
2 an intelligence activity.

3 “(b) The provisions of this section shall not be super-
4 seded except by a provision of law which is enacted after the
5 date of enactment of this section and which specifically cites
6 and repeals or modifies its provisions.

7 “(c) Notwithstanding subsection (a) of this section,
8 proper requests by United States citizens, or by aliens law-
9 fully admitted for permanent residence in the United States,
10 for information concerning themselves, made pursuant to the
11 Privacy Act of 1974 (5 U.S.C. 552a) or the Freedom of In-
12 formation Act (5 U.S.C. 552), shall be processed in accord-
13 ance with those Acts.

14 “(d) The Director of Central Intelligence shall promul-
15 gate regulations to implement this section as follows:

16 “(1) Such regulations shall require the appropriate
17 Deputy Directors or Office Head to: (A) specifically
18 identify categories of files under their control which
19 they recommend for designation; (B) explain the basis
20 for their recommendations; and (C) set forth procedures
21 consistent with the statutory criteria in subsection (a)
22 which would govern the inclusion of documents in des-
23 ignated files. Recommended designations, portions of
24 which may be classified, shall become effective upon

1 written approval of the Director of Central Intelli-
2 gence.

3 “(2) Such regulations shall further provide proce-
4 dures and criteria for the review of each designation
5 not less than once every ten years to determine wheth-
6 er such designations may be removed from any catego-
7 ry of files or any portion thereof. Such criteria shall in-
8 clude consideration of the historical value or other
9 public interest in the subject matter of the particular
10 category of files or portions thereof and the potential
11 for declassifying a significant part of the information
12 contained therein.

13 “(e)(1) On the complaint under section 552(a)(4)(B) of
14 title 5 that the Agency has improperly withheld records be-
15 cause of improper designation of files or improper placement
16 of records solely in designated files, the court’s review shall
17 be limited to a determination whether the Agency regulations
18 implementing subsection (a) conform to the statutory criteria
19 set forth in that subsection for designating files unless the
20 complaint is supported by an affidavit, based on personal
21 knowledge or otherwise admissible evidence, which makes a
22 prima facie showing, that (A) a specific file containing the
23 records requested was improperly designated; or (B) the
24 records requested were improperly placed solely in designat-
25 ed files. If the court finds a prima facie showing has been

1 made under this subsection, it shall order the Agency to file a
2 sworn response, which may be filed in camera and ex parte,
3 and the court shall make its determination based upon these
4 submissions and submissions by the plaintiff. If the court finds
5 under this subsection that the Agency's regulations imple-
6 menting subsection (a) of this section do not conform to the
7 statutory criteria set forth in that subsection for designating
8 files, or finds that the Agency has improperly designated a
9 file or improperly placed records solely in designated files,
10 the Court shall order the Agency to search the particular
11 designated file for the requested records in accordance with
12 the provisions of the Freedom of Information Act and to
13 review such records under the exemptions pursuant to section
14 552(b) of title 5. If at any time during such proceedings the
15 CIA agrees to search designated files for the requested
16 records, the court shall dismiss the cause of action based on
17 this subsection.

18 “(e)(2) On complaint under section 552(a)(4)(B) of title 5
19 that the agency has improperly withheld records because of
20 failure to comply with the regulations adopted pursuant to
21 subsection (d)(2), the court's review shall be limited to deter-
22 mining whether the agency considered the criteria set forth in
23 such regulations.”.

24 (b) The table of contents at the beginning of such Act is
25 amended by adding at the end thereof the following:

"TITLE VII—RELEASE OF REQUESTED INFORMATION TO THE
PUBLIC BY THE CENTRAL INTELLIGENCE AGENCY

"Sec. 701. Designation of files by the Director of Central Intelligence as exempt
from search, review, publication, or disclosure."

1 SEC. 4. The amendments made by section 3 shall be
2 effective upon enactment of this Act and shall apply with
3 respect to any requests for records, whether or not such re-
4 quest was made prior to such enactment, and shall apply to
5 all cases and proceedings pending before a court of the
6 United States on the date of such enactment.

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